IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 27895 of 2005(U)

PETITIONER:

KUTHIRAKKARATHI CHEMMARATHI,
W/O.LATE KUTTIYATHU KUNHAMBU,
RESIDING AT PERALAM AMSOM, KOZHUMMAL DESOM,
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENTS:

STATE OF KERALA, REPRESENTED
BY SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL ADMINISTRATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. K.V. MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE EXTRACT OF UNDERTRIAL PRISONERS REGISTER PERTAINING TO SRI. KUTTIYATTU KUNHAMBU.(WRONGLY NOTED AS EXT.P2)

EXT.P2: A TRUE COPY OF THE PERSONAL KNOWLEDGE CERTIFICATE ISSUED BY SRI. K.P.R. RAYARAPPAN WHO WAS A PROMONENT FREEDOM FIGHTER AND HOLDER OF THAMARAPATHRA. (WRONGLY NOTED AS EXT.P1)

EXT.P3: A TRUE COPY OF THE REPRESENTATION BEFORE THE RESPONDENT.

EXT.P4: A TRUE COPY OF THE JUDGMENT DATED 18.05.2005.

EXT.P5: A TRUE COPY OF THE COMMUNICATION DATED 11.07.2005.

/True Copy/

P.A to Judge.

T.R. RAMACHANDRAN NAIR, J

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W.P.(C) NO. 27895 OF 2005

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Dated this the 2nd day of August, 2007.

JUDGMENT

The petitioner is the widow of late Shri. Kuttiyathu Kunhambu, a freedom fighter. The cause of action for filing this writ petition is the rejection of the application for pension under the Kerala Freedom Fighters Pension Scheme.

2. The claim of the pension is based on the participation of her husband in the Karivellur Food Struggle. It is stated that he was a proclaimed offender and warrant of arrest was issued against him and consequent upon which he remained underground from 20.12.1946 to 28.04.1947. It is stated that on 28.04.1947 he was arrested by the British police. Ext. P1 is the true extract of undertrial prisoners register pertaining to the petitioner. Ext.P2 is the personal knowledge certificate issued by Shri. K.P.R. Rayarappan .

3. The application of the petitioner has been rejected as per Ext.P5 mainly for the reason that going by the documents produced by her it can be seen that her husband had undergone imprisonment only for 5 days. As per the scheme, those who had

undergone imprisonment for six months or those who had underground sufferings for six months are eligible for pension. It is also stated that in the case of the Abscondence certificates produced by the petitioner, the jail records of the certifier are not seen produced and the relevant extract of the school register in proof of age is also not produced.

4. A reading of Ext.P5 would show that an opportunity had been given to the petitioner to produce those records by the District Collector.

5. The learned counsel for the petitioner submits that in the light of Ext.P1 and P2, the claim of the petitioner ought to have been allowed. The learned Government pleader points out that going by the reasons stated in Ext.P5 the authorities cannot be found fault for rejecting the application as the petitioner has not produced any additional documents required to consider the application.

6. The authorities were right in arriving at the conclusions in Ext.P5 as want of sufficient documents was the main reason in rejecting the application. Still if the petitioner is able to produce

additional materials, nothing prevents the application being considered for grant of pension. Actually Ext.P5 is not one reflecting any decision on the merits of the claim, but it is based on the fact that some of the documents required were not produced.

7. Therefore, while confirming Ext.P5 I also make it clear that if the petitioner is able to forward necessary materials required as per the scheme, the respondents will consider the request in accordance with law on the merits of the claim and pass appropriate orders on receipt of the same. If the petitioner submits any written representation along with the documents the petitioner want to rely upon within two months from today, the same shall be considered by the respondent, in accordance with law, within a further period of three months.

The writ petition is disposed of accordingly.

T.R. RAMACHANDRAN NAIR, JUDGE.

rv

KURIAN JOSEPH &
T.R. RAMACHANDRAN NAIR, JJ

L.A.A. NO. 805 of 2001

13th day of July, 2007

JUDGMENT